95-1656

Supreme Court, U.S.
FILED
JAN 23 1996
CLERK

IN THE UNITED STATES SUPREME COURT

October 95

JEFFREY ROY TAYLOR
Petitioner

v.

UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI
APPENDIX

UPON APPEAL FROM THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

JEFFREY ROY TAYLOR
7505 S.W. Beveland Road
Tigard, OR 97223
503-684-5037

Pro Se

12 HP

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

UNITED STATES OF AMERICA NO. CR 93-118-01

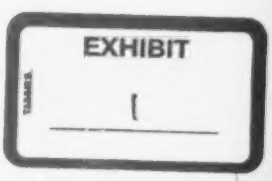
V. MOTION TO WITHDRAW PLEA PLEA OF GUILTY

JEFFREY ROY TAYLOR
Defendant

Jeffrey Roy Taylor, through his attorney, Ronald H. Hoevet of Hoevet and Snyder P.C. moves to withdraw his plea of guilty, pursuant to Rule 32(d) of the Federal Rules of Criminal Procedure.

Under Rule 32(d) a defendant may move to withdraw his plea of guilty before sentence is imposed upon a showing by the defendant of "any fair and just reason".

Although as a general rule, Federal District Judges freely allow a withdrawl of guilty pleas before sentence, there exists no right to withdraw a guilty plea. United States v. Paulson 798 F Supp. 636



(D Mont. 1992).

The burden is on Mr. Taylor to show any fair or just reason. Accompanying this motion is his affadavit. He hopes you will permit him to have his day in court.

DATED this 12th day of November 1993.

/s/ Ronald H. Hoevet

I, Jeffrey R. Taylor, being first duly sworn, do depose and say:

1. I am not guilty of willfully evading my income taxes for 1987.

2. My decision to plead guilty to wilfully evading my income taxes for 1987 was made at the eleventh hour. The day before the trial was to begin, I asked Mr. Hoevet to reopen plea negotiations with the attorneys for the government. I was disheartened. I believed, based on the non-wilful errors on my tax return and Mr. Hoevet's opinion that a jury would likely find me guilty.

8. I pray that the Court will exercise its broad discretion in

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allowing me to withdraw my plea of guilty and proceed to trail.

Dated this 12 day of November 1993.

Jeffrey R. Taylor

Sentencing is set for December 6th at 1:30 p.m.

MR. FITZGERALD: Your Honor, if I may? In the restitution from the defendant, the Government did not hear any admission regarding the tax that was due which is an element.

THE COURT: I believe the plea agreement covered that. But the element you're speaking of is the 58,000 figure?

MR. HOEVET: Excuse me, your Honor. The plea petition states he understated his taxable income, which means he understated his taxes computed from the taxable income. We will agree he understated his taxable income and his income tax which is the element of the offense Mr. Fitzgerald thinks is missing.

THE COURT: You do acknowledge that? I thought you had so

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stated.

Would you repeat that for him Mr. Hoevet?

MR. HOEVET: Yes, in the petition as written out, it states he understated his income -- his taxable income. We would agree Mr. Taylor understated his taxable income and as a result, the taxes.

THE COURT: Is that correct?

MR. FITZGERALD: I would accept that, your Honor.

THE COURT: The further concession that the Government seeks, I gather is that the amount of the tax loss suffered as a result is 54,088.

MR. FITZGERALD: Your Honor, the Government does not necessarily seek that admission, but just the admissions to the element of the taxes that were due and owing considering the fact there might be credit that would apply and that sort of thing.

THE COURT: Okay. All right.

MR. FITZGERALD: The Government is satisfied.

THE COURT: I've signed the order. Is there anything further?

MR. FITZGERALD: Nothing from the Government, Your Honor.

MR. HOEVET: No, your Honor, thank you.

THE COURT: We will be in recess.

(CONCLUDED)

I certify that the foregoing is a true and accurate transcript of the record of proceedings in the above-entitled cause. October 1, 1993.

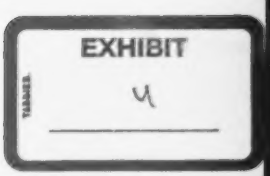
/s/ Jerry C. Harris
Official Reporter

June 28, 1993

U.S. Department of Justice

United States Attorney

District of Oregon



Ronald H. Hoevet Esq.
Hoevet, Snyder, and Miller, P.C.
2100 Standard Insurance Center
900 S.W. Fifth Avenue
Portland, OR 97204

Re: United States v. Jeffrey Taylor, CR No. 93-118-RE

Dear Mr. Hoevet:

Enclosed please find a plea agreement for your client and additional discovery in the above captioned case. As the government is required to inform the Court on July 9, 1993 whether the case is expected to proceed to trial, this offer expires at the close of business the previous day, July 8, 1993.

During our meeting on June 24, 1993, we discussed the possibility of examining whether the tax loss in the case could be lowered below 40,000. This would decrease the guidelines calculation by one offense level to 8 (with acceptance of responsibility) resulting in a guideline range of 0 to 6 months in the A range. You further requested that we not oppose a recommendation for home detention.

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We have examined the tax loss calculations again and discussed the matter with our supervisors. We concluded that the tax loss calculations are based on readily provable income items; consequently we would not be able to lower the tax calculations without violating department policy.

The guidelines tax loss calculations -- 54,088 -- results in an offense level 9 (assuming a two-level reduction for acceptance of responsibility) with a sentencing range of 4 to 10 months in the B range. If Mr. Taylor is inclined to accept this offer, we would be willing to join in a defense recommendation for probation with a confinement component of 4 months home detention (the low end of the applicable sentencing range).

If Mr. Taylor elects to pursue this case through trial and is convicted, he will be sentenced at an offense level 11, with a sentencing range of 8-14 months in the C range. Under these circumstances, the minimum sentence the Court could impose would require a period of confinement of at least 4 months in

prison, followied be either community or home confinement of 4 months.

Moreover, if Mr. Taylor testifies in his own defense and is convicted, we will request a two-point enhancement for obstruction of justice. This enhancement would raise Mr. Taylor's offense level to 13, requiring the Court to impose a minimum 12 month term of imprisonment on Mr. Taylor.

You will note that the plea agreement reflects our understanding that no additional enhancements beyond the base offense level are applicable in this case.

Please feel free to call me should you have any questions or comments about the foregoing. I can be reached at 202-514-5052 Washington DC or 503-727-1045 Portland, Oregon.

Yours sincerely,

/s/Arthur S. Lowry
Trial Attorney Tax Division
U.S. Department of Justice

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA DC CV 94-01414 JAR

Plaintiff-Apellee

v. MEMORANDUM

JEFFREY ROY TAYLOR

Defendant-Appellant

Appeal from the United States District Court

for the District of Oregon

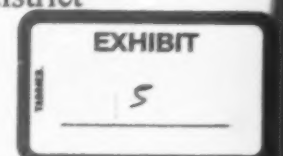
James A. Reden, District Judge, Presiding

Before: BEEZER, THOMPSON, and T.G. NELSON, Circuit Judges.

Taylor appeals pro se the denial of his 28 usc 2255 motion. We have jurisdiction pursuant to 29 usc 1291.

BACKGROUND

Taylor was indicted on two counts of tax evasion. Pursuant to a plea agreement he pleaded guilty to one count and the district



court accepted the plea. He then filed a motion to withdraw the plea, which the court denied. The court sentenced him to three years of probation, 54,088 in restitution and a 1,000 fine.

Taylor did not directly appeal his conviction. Instead he entered a motion under 28 USC 2255 to withdraw his guilty plea, arguing that 1. his presentence motion to withdraw should have been granted, 2. he did not enter the plea knowingly and voluntarily, 3. he was denied effective assistance of counsel, and 4. newly discovered evidence would have caused him not to plead guilty.

ANALYSIS

1. Motion to Withdraw Guilty Plea

Taylor argues that the court have granted his motion to withdraw his guilty plea. We review for abuse of discretion the denial of a motion to withdraw a guilty plea. Unite States v. Alber 56 f3d 1106,1111 (9th Cir 1995). If a defendant moves to withdraw a guilty plea before the imposition of sentence, the court

may permit withdrawl upon a showing of any fair or just reason. Fed r. Crim P. 32e.

Taylor said in the affidavit to his motion that he was not guilty of evading taxes and that he did not understand that the plea agreement contained a stipulation to a tax loss of 54,000. The court was entitled to credit his testimony a the plea hearing over the subsequent assertions in his affadivit.

2. Guilty Plea Invalid

Taylor contests the validity of his guilty plea. We review for error the findings of fact regarding the validity of a plea. A plea is invalid if induced by threats or promised which deprive it of the character of a voluntary act. Chizen v. Hunter, 809 F2d 560,561 (9th Cir. 1986).

Taylor argues that he did not enter the plea intelligently because he did not understand the terms of the plea agreement. He argues that there was no "meeting of the minds" between him and the government over the tax loss figure, and says that he "never,

never agreed that the tax loss was 54,088. To support this argument he cites a change in the wording of the plea agreement from "Mr. Taylor admits to "the government is prepared to prove that" the parties agreed to a tax loss of 54,088.

Taylor also contends that his plea was not voluntary because it was induced by threats and fear. He argues that the government threatened him by saying in its plea agreement cover letter that it would ask the court for an obstruction of justice enhancement if he testified on his own behalf and was convicted. This statement was not a threat but merely fair notice of what the government was entitled to recommend if he did not accept the plea. We reject his argument that his plea was not voluntary.

3. Ineffective assistance of counsel

Taylor contends that he was deprived effective assistance of counsel in violation of the Sixth Amendment. We review de novo ineffective assistance claims. To prevail on such a claim, the defendant must demonstrate that counsels actions were outside the

wide range of professionally competent assistance, and that he was prejudiced by reason of these actions. Strickland v Washington, 466 US 668, (1984).

Taylor contends that his attorney "browbeat" him into accepting the plea. Specifically he says that his attorney told him that his ex-wife and former accountant would testify that he wilffully underreported his income if he did not accept the plea. He says that his ex-wife and former accountant later told him that they believed he had made some innocent mistakes on his tax return but that fthey were not willful. Taylor has not, however provided any evidence to support these assertions. Taylor has not made the requisite showing of deficient representation.

Taylor also contends that his attorney failed to inform him that he could appeal and inform him of the filing deadline such an appeal. Assuming his attorney did fail to inform hi, no prejudice exists because, as shown above, Taylor would have no grounds for successfully challenging his guilty plea.

4. New Evidence

We review for clear error the district court's factual findings on claims of newly discovered evidence. United States v. Estrada-Plata, 57 F3d 757, 763 (1995). Taylor contends that new evidence in the form of corporate bank statements and corporate tax returns came to light six months after his conviction which support his claim that the tax loss was lower than 54,088. He says that these documents show that he paid his company's overdraft loans with personal income and reported personal income on corporate returns, resulting in lower personal income and tax. We agree with the district court that this new evidence does not provide a basis for invalidating his guilty plea.

AFFIRMED

A True Copy
Cathy A Catterson
Clerk of the Court
Attest

February 21, 1996